

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK CITY DISTRICT COUNCIL
OF CARPENTERS PENSION FUND, et al.,

Plaintiff,

-against-

DEKO ENTERPRISES LLC,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/4/08

08 Civ. 4783 (RJH)

ORDER AND JUDGMENT

Plaintiffs bring this action pursuant to section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a) ("LMRA"), section 502(a) of the Employee Retirement Security Act, 29 U.S.C. § 1132(a) ("ERISA"), and section 9 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9,¹ to confirm an arbitration award issued April 27, 2008 (the "Award"). The complaint was filed on May 22, 2008, and served upon defendant shortly thereafter. To date, defendant has not filed an answer or opposition to plaintiffs' action. On June 30, 2008, the Clerk of the Court noted defendant's default and plaintiffs moved for a default judgment.

"[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Florasynth, Inc.*

¹ "The Arbitration Act does not apply to 'contracts of employment of . . . workers engaged in foreign or interstate commerce,' but the federal courts have often looked to the Act for guidance in labor arbitration cases, especially in the wake of the holding that § 301 of the Labor Management Relations Act empowers the federal courts to fashion rules of federal common law to govern "[s]uits for violation of contracts between an employer and a labor organization" under the federal labor laws. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 41 n.9 (1987) (citations omitted) (alterations in original).

v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984). As such, the Second Circuit has held that “default judgments in confirmation/vacatur proceedings are generally inappropriate.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Rather when a district court has before it a record, “such as an agreement to arbitrate and the arbitration award decision itself, . . . the judgment the court enters should be based on th[at] record.” *Id.* Under the LMRA, an arbitration award should be upheld as long as it “draws its essence from the collective bargaining agreement.” *United Steelworkers of America v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Even if the Court is convinced that the “[the arbitrator] committed serious error,” the award should not be vacated so long as the arbitrator is “even arguably construing or applying the contract and acting within the scope of his authority.” *United Paperworkers Int’l v. Misco*, 484 U.S. 29, 38–39 (1987). Under § 9 of the FAA upon timely application by any party, a court *must* grant an order to confirm an arbitration award unless the award is vacated, modified, or corrected as prescribed in §§ 10 and 11 of the FAA. *See Hall St. Assocs. v. Mattel, Inc.*, 128 S. Ct. 1396, 1405 (2008).

Having reviewed the Award and the affidavits and exhibits submitted by plaintiffs, the Court confirms the Award, and enters judgment as follows:

It is ORDERED, ADJUDGED and DECREED that the plaintiffs have judgment against defendant, pursuant to the Award in the liquidated amount of \$2,350.00, in addition to attorneys’ fees and costs arising out of this action in the amount of \$1,849.00 for a total of \$4,199.00; and

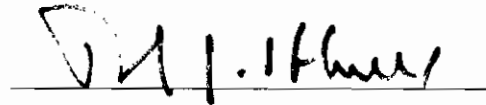
It is further ORDERED, ADJUDGED and DECREED that pursuant to the Award, defendant Deko Enterprises LLC and its officers are ordered to produce to the

Board of Trustees of the New York City District Council of Carpenters Benefit Funds any and all books and records necessary for the conduct of an audit to determine the amount of contributions due the plaintiff funds during the period from December 19, 2003 through April 27, 2008, including the cash disbursement section of the cash book, the general ledger, job location records, daily location records, daily time records, and certified payrolls for the period in question.

The Clerk of the Court is requested to close this case.

SO ORDERED.

Dated: New York, New York
August 1, 2008

A handwritten signature in black ink, appearing to read "R. J. Holwell", is written over a horizontal line.

Richard J. Holwell
United States District Judge

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #:

()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
-V-
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL**

civ.

()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

()

(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 2

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME**

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time

(party)
respectfully requests the court to grant an extension of time in
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)_____
(Address)_____
(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

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-V-
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006